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Report of the International Criminal Court

Note by the secretariat

The secretariat of the Assembly of States Parties has received the following report from the International Criminal Court and has been requested to submit it to the Assembly for its consideration.

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International Criminal Court

Report to the Assembly of States Parties, 2003

I. The Court

General remarks

1. In 2003, the International Criminal Court (ICC) became a reality. A fully functioning Court has been built on the foundations laid by the Rome Statute. In recent months and with the appointment of its most senior officials, the Court has widened the nature of its work from mainly operational and administrative set up operations to work on judicial and prosecutorial questions. Once an aspiration, the ICC has entered a new phase and has become an operational judicial institution.

2. In the coming year and in the future, the Court will endeavour to meet the standards that were set for it by the States Parties to the Rome Statute: to conduct efficient, transparent and fair investigations and prosecutions. Only by ensuring those benchmarks will the Court be able to meet its main objective: to be an independent and credible institution of international criminal justice.

3. The present report is intended to provide a general overview of the specific steps that have been taken over the past year (September 2002-September 2003) to meet those goals. It builds on the report of the Director of Common Services (ICC-ASP/CRP.1) and contains an overview of the activities of each of the organs of the Court, as well as the coordination between them. It also describes the Court's interactions with certain other international entities.

Coordination within the Court

4. Under articles 38, 42 and 43 of the Rome Statute, responsibility for the administration of the Court is shared among the three pillars of the Court: the Presidency, the Prosecution and the Registry. It is clear that for the good governance of the Court, those three organs must work together closely, under conditions of mutual respect and trust. In order to facilitate that cooperation, a Coordination Council has been established. At Coordination Council meetings, the President, the Prosecutor and the Registrar discuss issues of common concern. The first of those meetings was held immediately after the election of the Prosecutor, and they have since been held at least once a month.

5. On another level, the principal assistants to the President, Prosecutor and Registrar meet every week. A wide variety of topics are discussed at those meetings, and wherever possible a common position is established. Where an issue is of particular importance or consensus cannot be reached, the matter is referred to the Coordination Council.

6. Separate structures have been set up to ensure administrative coordination on the working level, including a weekly meeting of the section chiefs of the Registry, at which they report on important matters affecting the administration of the Court. Representatives of the Presidency and of the Prosecution attend those meetings, allowing all to stay informed of current developments and to raise problems encountered in their offices in order to find mutually acceptable solutions.

A. Presidency

7. The 18 judges of the International Criminal Court were elected by the Assembly of States Parties at its resumed session, in February 2003. Immediately after the inaugural meeting of the Court held in March 2003, the Judges elected the three members composing the Presidency: Judge Philippe Kirsch was elected President, Judge Akua Kuenyehia was elected First Vice-President and Judge Elisabeth Odio Benito was elected Second Vice-President. The members of the Presidency have been working on a full-time basis since their election in March.

8. The functions of the Presidency may be divided into three areas: judicial tasks, administrative tasks and external relations. The Presidency has decided to allocate certain duties among its members. The First Vice-President will be the focal point for the administrative aspects of the Presidency's work and the Second Vice-President will be the focal point for the judicial responsibilities.

9. Under article 38, paragraph 3, the Presidency is responsible for the proper administration of the Court. The Registrar exercises his responsibilities for the non-judicial aspects of the administration and servicing of the Court pursuant to article 43, under the authority of the President. With a view to establishing a sound framework for their cooperation in the future, the Presidency and the Registry are currently developing procedures for their cooperation in administrative matters.

10. In addition, article 38, paragraph 4 requires the Presidency to "coordinate with and seek the concurrence of the Prosecutor in all matters of mutual concern". That coordination occurs through the Coordination Council described above.

11. The judicial work of the Presidency consists of creating systems and mechanisms that will enable the Court to have efficient and fair proceedings. As such, it overlaps with the preparations undertaken by the judges as a whole, as described in paragraphs 13 to 18 below.

12. The Presidency's aim in external relations is to "put the Court on the map" and help explain its role in the international political and institutional landscape. To that end, members of the Presidency have made speeches to many different audiences and given various interviews on the subject of ICC. Numerous meetings, both formal and informal, have also taken place with those interested in the work of the Court, including representatives of States, international organizations, NGOs, universities and other institutions.

B. Chambers

13. At the inaugural meeting of the Court, the judges constituted themselves into the three Divisions envisaged by the Statute: the Pre-Trial, Trial and Appeals Divisions. The Pre-Trial Division is composed of seven judges, the Trial Division of six judges and the Appeals Division of five judges, while each member of the Presidency sits in one of the Divisions.[1] In line with article 35, paragraph 3, of the Statute, the Presidency will decide, on the basis of the workload of the Court, to

[1] The judges composing the Pre-Trial Division are: F. Diarra, C. Jorda, H.-P. Kaul, A. Kuenyehia, M. Politi, T. Slade; the judges composing the Trial Division are: R. Blattmann, M. Clark, A. Fuldford, K. Hudson-Phillips, E. Odio Benito, A. Usacka; the judges composing the Appeals Division are: P. Kirsch, E. Kourula, G. Pikis, N. Pilay and S. Song.

what extent the judges will be required to serve on a full-time basis. In taking that decision, the Presidency will balance different needs and interests: on the one hand, the Chambers must be ready when cases are brought before the Court; on the other hand, there must be sufficient work to justify calling the judges for full-time service to The Hague.

Preparation of judicial functions

14. In the meantime, the judges are required to ensure that the Chambers are in all ways prepared for the commencement of the first cases before the Court. The aim is to ensure that the judicial processes will be transparent and efficient. To that end, the judges have met in three plenary meetings. Their preparations have encompassed the following issues:

(a) Regulations of the Court;

(b) Planning internal structures for Chambers;

(c) Discussion of certain important theoretical and practical matters.

Regulations

15. The most pressing task facing the judges of the International Criminal Court is the preparation of regulations of the Court, pursuant to article 52 of the Rome Statute. In order to ensure that that document is adopted before cases begin and also that it is of the highest quality, the judges constituted themselves into working groups which prepared different chapters of the regulations, and the results were discussed by the judges meeting in plenary session.

16. The drafting of the regulations is moving into its closing stages and the different drafts are currently being consolidated by a team of experts within the Court. They will contain the following chapters: "General provisions"; "Composition and administration of the Court"; "Proceedings before the Court"; "Participation of victims and reparations"; "Defence counsel"; "Detention matters"; and "Code of ethics". The judges will hold another plenary meeting in November 2003 to discuss and finalize the regulations. The Prosecutor and the Registrar are closely involved in that process. After the adoption of the regulations, they will be circulated to States Parties for comments.

Internal structures for Chambers

17. The judges have also been planning the structures for legal research, drafting and administrative assistance to Chambers. A long-term project has been undertaken by the Second Vice-President in order to present the judges with different models to organize the legal assistance for Chambers. In the meantime, the judges have adopted an interim staffing structure which allows for appropriate flexibility for the future.

Other issues

18. Certain other important issues, such as the principle of complementarity, have been discussed by the judges in working groups and in plenary meetings. It is important that those issues be developed and discussed with other organs of the Court, notably the Office of the Prosecutor. During their plenary sessions, the judges

have also begun important dialogues with the Prosecutor, the President of the Assembly of States Parties and the Host State authorities.

C. Office of the Prosecutor

1. Assumptions

19. On 21 April 2003, the Assembly of States Parties, meeting in its second resumed first session, unanimously elected Luis Moreno-Ocampo as Prosecutor of the Court. Mr. Moreno-Ocampo took office on 16 June 2003 by pledging his solemn undertaking, as required by article 45 of the Rome Statute.

20. The Office of the Prosecutor is responsible for receiving referrals and information on crimes within the jurisdiction of the Court, and for investigating and prosecuting cases of genocide, crimes against humanity and war crimes before the Court, which requires fulfilling the following five main functions:

(a) Interacting with States Parties and nationals of all States;

(b) Analysing information on situations which could fall under the jurisdiction of the Court;

(c) Initiating an investigation after referral or authorization of the Pre-Trial Chamber;

(d) Prosecuting cases before the Trial Chamber;

(e) Providing services within the Office, such as the storage of information, legal advice, language services and a knowledge base.

21. In the light of those functions, the Office has started to organize its structure and work under the following assumptions for the coming year:

(a) On the basis of the information currently available, there will be one situation covering three case investigations (each with a reduced number of suspects), requiring three investigation teams: one fully operational from January 2004, the second budgeted from June 2004 and the third budgeted from October 2004;

(b) There will be two analysis of information (preliminary examinations) teams, one of which may be converted into the second investigation team.

Those assumptions are, of course, tentative and subject to unpredictable developments.

2. Policy and regulations of the Office

22. Immediately after the election of the Prosecutor, the Office began to draft a policy paper intended to define the general strategy for the Office, highlight the priority tasks to be performed and determine an institutional framework capable of ensuring the proper exercise of its functions.

23. In accordance with article 42(2) of the Rome Statute and rule 9 of the Rules of Procedure and Evidence, draft regulations of the Office of the Prosecutor are being developed in an open-ended consultation process. The draft regulations address the following points: the mission, mandate and internal structure of the Office of the

Prosecutor; a code of conduct and training guidelines; complementarity practice; the treatment of referrals and information received under article 15; investigation and prosecution; information and evidence management; and external communications and media relations. Given the nature of the tasks to be accomplished by the Office in the early phases of its operation and following expert advice, parts of the regulations have been adopted on an interim basis, addressing key issues immediately relevant to the needs of the Office. The interim sections are those governing information and evidence management and the management of communications under article 15, as well as the code of conduct and training. The final text of the regulations will be adopted in 2004, taking into account the comments received and the experience gained during the first months of the actual operation of the Office.

24. In order to benefit from the best practices of national criminal justice systems and the ad hoc international criminal tribunals, seven interdependent consultation processes involving over 125 leading criminal justice experts were conducted from November 2002 to 15 June 2003. Through those processes, in-depth reports were prepared for the consideration of the Prosecutor, covering such key issues as the length of proceedings, investigation and state cooperation, and complementarity in practice. Individual expert papers were also prepared and made available on the web sub-site of the Office of the Prosecutor for public comment and debate. The outcome of those consultation processes provide a firm intellectual and practical foundation for the strategic and operational policies of the Office.

3. Public hearing

25. The Office convened a public hearing on 17 and 18 June 2003 at The Hague to discuss the policy paper and regulations of the Office of the Prosecutor. There was broad participation in the public hearing, including 120 experts in international criminal law, distinguished national judges and prosecutors, representatives of civil society and media commentators. Some 60 interventions were made in an individual, expert capacity, advising the Prosecutor on policy questions facing the Office in the initial stages of its operations.

26. The proceedings of the public hearing were made available on the web sub-site of the Office within three weeks of the event. The Office has carefully reviewed the recommendations received and offered comments and conclusions on the Web. The public hearings have been welcomed as a transparent, precisely targeted and structurally coherent process. Further consultations are planned for the fourth quarter of 2003, and a second public hearing will be held in 2004 with a view to adopting the regulations of the Office.

4. Recruitment of a Deputy Prosecutor and members of staff

27. The Office of the Prosecutor needs to recruit staff members with a demonstrated commitment to the principles and purposes of the Rome Statute and a ready adaptability to the international legal culture being cultivated at every level of seniority. The process of recruitment is the responsibility of the Services Section of the Office and the section chiefs, in close cooperation with the Registry of the Court. The membership of the Office currently comprises the Prosecutor, 11 temporary and long-term staff from eight States Parties across three continents, six law clerks from five States Parties across three continents and four consultants from

four States Parties across three continents, and will extend to 51 positions by the end of 2003. Recruitment is proceeding apace.

28. Following a call for applications or nominations for the position of Deputy Prosecutor, the Office received applications from 130 candidates, 14 of whom were interviewed. With the advice of current and former Prosecutors of the International Tribunals for the former Yugoslavia and Rwanda, the Prosecutor has proposed three candidates to the Assembly of States Parties for the post of Deputy Prosecutor (Investigations). With overall management responsibility for the Investigation Division of the Office, the Deputy Prosecutor will be expected to coordinate the first investigations of the Office efficiently and impartially.

29. In mid-2003, the Office of the Prosecutor formally launched its clerkship programme, inviting graduates of exceptionally high calibre to serve at the Office for up to six months. Seven law clerks have been recruited by the Office to date, and have made indispensable contributions to the establishment and initial activities of the Office. The Office plans to recruit up to 40 clerks in the coming year.

5. Management of communications received by the Office

30. The Office is responsible for receiving information on crimes within the jurisdiction of the Court under article 15 of the Rome Statute. The Office has a statutory duty to analyse the seriousness of all information received, forming the basis for a decision by the Chief Prosecutor on whether to initiate an investigation by seeking the authorization of the Pre-Trial Chamber.

31. The Information and Evidence Unit acknowledges, registers, stores and secures all communications and supporting material received by the Office, to the highest international standards of information and evidence management. In accordance with the interim regulations of the Office, those communications are closely reviewed by a specialist team of lawyers, analysts and investigators. The team makes recommendations to the Chief Prosecutor on further action, such as seeking additional information under article 15, paragraph 2, of the Rome Statute. It is central to the regulations and the practice of the Office that all communications are treated equally and channelled through a predefined and efficient process of analysis.

32. From July 2002 to 8 July 2003, the Office of the Prosecutor received 499 communications from 66 different countries, of which 23 per cent originated in non-States Parties. Fifty communications fell outside the temporal jurisdiction of the Court; 38 concerned allegations of a "crime of aggression" and, together with over 70 per cent of other communications, manifestly fell outside the current subject-matter jurisdiction of the Court. To date, the Office has received no referrals from the Security Council or from a State Party, and no declarations of consent to jurisdiction by a non-State Party.

33. On 16 July 2003, one month after the inauguration of the Prosecutor, the Office held a press conference to provide information on the communications received to date. The Office announced that it will closely follow the urgent situation in Ituri, in the Democratic Republic of Congo.

D. Registry

34. The Registrar, Bruno Cathala, was elected on 24 June 2003 by an absolute majority of the judges meeting in plenary session. A week later, on 3 July 2003, the Registrar was sworn in at the seat of the Court. He commenced his duties immediately thereafter. The Registry has defined as its core mission the provision of effective and efficient administrative and operational support to both the judicial and the prosecutorial pillars, allowing them to carry out their mandates effectively.

35. The common services platform of the Registry includes the following functions: human resources, budget, finance, internal audit, procurement, general services (including building management), information technology and communication, public information and documentation, and security.

36. In addition, the Statute has given the Registrar certain quasi-judicial functions, mainly in the areas of victims and witnesses, and counsel, including court administration, the organization of counsel, witness protection and support, victim participation and reparation, and detention matters.

1. Common services platform

Human Resources Section

37. The Human Resources Section has continued its work of setting up recruitment procedures, and has focused mainly on the recruitment of new staff members, allowing the Court to build the necessary administrative capacity for the support of all organs of the Court. Transparent recruitment guidelines are applied to assist in this process.

38. From the establishment of the Court until August 2003, over 8,000 applications have been received, at an average rate of 30 applications a day. The current staff of the Court consists of 88 fixed-term and nine short-term staff, representing the following 32 nationalities: Argentina, Australia, Austria, Belgium, Bosnia and Herzegovina, Canada, Colombia, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Denmark, France, Germany, Ireland, Italy, Jordan, Lesotho, Mauritius, Mexico, Netherlands, Nigeria, Norway, Peru, Portugal, Romania, South Africa, Spain, Switzerland, Trinidad and Tobago, Uganda, United Kingdom and Zambia. Another 57 posts are currently in the recruitment process and 57 vacancies remain to be advertised from the current budgeted staffing table.

39. In accordance with article 44, paragraph 3, of the Statute, the Registrar, with the agreement of the Presidency and the Prosecutor, has proposed staff regulations for approval by the Assembly. The drafting of staff rules consistent with, and for the implementation of, the regulations will start soon after the Assembly's approval of the regulations.

40. A request was submitted by the Court to the Governing Body of the International Labour Office (ILO) to extend the jurisdiction of its Administrative Tribunal to staff of the Court. At its 286th session (6-28 March 2003), the Governing Body approved the Court's request. As of 28 March 2003, the ILO Tribunal is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of staff and of the provisions of the staff rules and regulations of the Court.

41. Pursuant to ICC-ASP/1/decision 3, a formal application for membership of the Court in the United Nations Joint Staff Pension Fund (UNJSPF) was submitted to the Standing Committee of the Pension Fund Board in April 2003. The Pension Fund Board met in New York from 7 to 11 July 2003, and after considering the Court's application, recommended to the General Assembly the approval of the Court's application. That affirmative recommendation by the Board paves the way for the General Assembly to admit the Court to UNJSPF membership effective 1 January 2004. Steps are being taken to place the matter on the agenda of the General Assembly. In the meantime, the Court has also initiated discussions with the Pension Board on conditions for its admission to UNJSPF membership, including any arrangements for the recognition of service performed by the Court's staff before entry into UNJSPF, as well as acceptance by the Court of the jurisdiction of the United Nations Administrative Tribunal, for claims alleging non-observance of UNJSPF regulations. An agreement between the Court and the Pension Fund will be signed as soon as those negotiations are finalized.

Audit

42. The external auditor selected by the Assembly of States Parties (National Audit Office of the United Kingdom (NAO)) held discussions with senior officers of the Court during a two-day introductory visit to the Court in June 2003. The discussions focused on current issues and processes, but were not supplemented by audit work. Based on those discussions, NAO will submit an initial assessment report to the Assembly of States Parties pursuant to paragraph 117 of the budget of the first financial period.[2] It is envisaged that an initial audit will commence in late September or early October 2003, when there will be thorough discussions between the Court and the auditor regarding the methodology of the audit and the accounting standards to be implemented. The first official audit of the financial statements will be conducted in the first quarter of 2004, in accordance with Financial Rule 111.8.

Information Technology and Communications Section

43. The Information Technology and Communications Section completed several large projects during the first year of operations, including recabling of the building to a modern standard; ensuring that sufficient computing resources were available to satisfy immediate information-processing requirements; completing the infrastructure plan; and setting up the architecture for its information systems.

44. The Section developed planning for information systems, drafted policies and set up standard operational procedures. The ongoing software projects are the implementation of the Intranet, an enterprise resource planning system, an electronic document management system, a Court (case) management system and other related databases. Those systems are at the end stages of product selection and delivery of phase one of each system is scheduled for the second half of 2003.

45. The continual focus on network security has intensified. The Section has selected a partner to implement a high-security network and the core ICC network has undergone significant re-engineering to accommodate the separation of duties and independence of the organs as required by the Statute. Measures include larger,

[2] In that paragraph, the budget noted that it was "considered advisable that an initial audit should cover the period beginning with the very first activities of the Court, including meetings of the Assembly of States Parties, until such time as the registrar takes up his or her duties".

more intelligent firewalls, intrusion detection systems, content filters, access lists and other security software and hardware.

Security

46. In close consultation with the Host State, much effort has been made to put in place the necessary security requirements for the interim premises of the Court (see also paras. 56-57 below). Another area of focus has been putting in place policies and procedures for security in the field, and dealing with the issue of information security (see also para. 45 above).

Public information and documentation

47. The swearing-in ceremonies of the Judges and the Prosecutor were used as opportunities to promote the Court worldwide within the strategy of communications. Wide media coverage was obtained. The anniversaries of the adoption of the Rome Statute and its entry into force further increased media attention.

48. A process to define a coordinated long-term strategy for external communications of the Court has begun. The Court is currently defining policies and practices related to external communications. The development of the official web site of the Court has been completed. The number of official visits to senior officers of the Court has significantly increased. During the period under review, 1,400 persons were briefed at the ICC premises; 2,500 enquiries were answered by the Public Information and Documentation Section; 3,000 flyers were distributed; 32 media interviews were coordinated by the Section and three press conferences were organized.

2. Quasi-judicial functions

Victims Participation and Reparations Unit

49. The Victims Participation and Reparations Unit is in charge of the organization of legal assistance to victims before the Court. The Unit has to set up systems to ensure the participation of victims in the proceedings and to assist their legal representatives, to assist victims in the presentation of their requests for reparations and finally to provide assistance to the Board of Directors of the Victims Trust Fund, as set out in resolution 6 of the Assembly of States Parties, adopted in September last year.

50. As far as the Fund is concerned, the Unit has been involved in the opening of bank accounts both in Europe and in the United States in order to start collecting funds. The Unit is planning to post very soon a vacancy announcement for a Fund Officer in order to speed up the campaign to raise funds. The Unit is also preparing for the arrival of the Board of Directors of the Fund, which should meet at the seat of the Court before the end of 2003.

Defence Counsel Unit

51. The main task of the Defence Counsel Unit has been to conduct preliminary research into the relevant regulations regarding the Defence, in order to assist the judges in making the necessary decisions in this area. Work has been done regarding

the list of counsel, a code of conduct for counsel, the regime of legal aid and establishing links with the associations aiming to represent counsel before the Court, mainly the International Criminal Bar and the Unión Iberoamericana de Colegios y Asociaciones de Abogados, both of which have declared their intention to serve as focal points between the Court and the legal profession.

Detention

52. Even though it was not considered likely that detention facilities would be required in 2003, fruitful discussions have been held with the Host State in preparation for a detention function. In addition, as part of the judicial regulatory work undertaken by the judges, relevant policies connected with detention are being developed.

II. External relations

A. Relations with States Parties

1. Financial contributions of State Parties

53. As of July 2003, there are 91 States Parties to the Rome Statute of the International Criminal Court, of which 39 have paid their contribution in full, 11 have made partial payments to the Working Capital Fund and/or the Regular Budget of 2002/2003, and 39 have yet to make any contribution.

2. Privileges and immunities

54. A particular concern is the need to rapidly increase the number of ratifications of the Agreement on Privileges and Immunities of the Court. Without that Agreement in place, it will be extremely difficult for the Court to operate outside the territory of the Netherlands. Now that the Court is becoming operational, that Agreement is an essential tool for the Court to conduct its operations. The Court has brought the matter to the attention of the Bureau of the Assembly of States Parties, and in its contacts with representatives of States Parties it has emphasized the need for a greatly increased number of ratifications of the Agreement.

B. Relations with the Host State

55. In recent months, constructive discussions have continued with the Host State concerning the building requirements of the Court. Discussions have centred on the refurbishment of the interim premises of the Court, finalizing the requirements for the permanent premises of the Court, and the terms of a headquarters agreement.

1. Interim premises

56. As regards the interim premises, projects are under way in the following areas: security measures (inter alia, fencing, security booth, central operation room, access control system and a common key plan); construction of an interim multifunctional pre-trial courtroom which can also be used as a normal meeting room; construction of a courtroom and adjacent facilities (secure archives, day-time holding cells,

media centre and other facilities); creating additional storage space for supplies; and building an additional vault in the offices assigned to the Office of the Prosecutor.

57. Discussions have also been held regarding the office space requirements of the Court in the interim period, which is anticipated to be approximately eight years. In that regard, the Court has requested the Host State to make additional space available to the Court in the coming years.

2. Permanent premises

58. As regards the permanent premises, the Court continues to seek and maintain a common approach with the Host State concerning the terms of the construction of the new building. It is anticipated that it will be possible to finalize the requirements and the general terms of reference for the new premises by the end of 2003.

3. Headquarters agreement

59. Negotiations between the Court and the Host State on a headquarters agreement are continuing. While good progress has been made on various issues now contained in a rolling text, a number of issues still remain to be discussed and resolved. In parallel with those negotiations, the Court has embarked on various projects aimed at ensuring the best outcome, including a comparative analysis of various headquarters agreements both in The Hague and in other locations, as well as an analysis and comparison between the rolling text, the basic principles and the provisions of the Agreement on the Privileges and Immunities of the International Criminal Court. The need to finalize an agreement as soon as possible has to be balanced with the need to produce a legally sound document that will enable the effective and efficient functioning of the Court in the Host State for years to come. Pending the conclusion of a headquarters agreement, the International Criminal Tribunal for the Former Yugoslavia agreement will be applied on a provisional basis.